

1 KENNER LAW FIRM, P.C.
David E. Kenner, SBN 41425
2 Brett A. Greenfield, SBN 217343
16000 Ventura Boulevard, PH 1208
3 Encino, CA 91364
818 995 1195
4 818 475 5369 - fax

5 WADE, KELLY & SULLIVAN
733 W. 4th Avenue, Suite 200
6 Anchorage, Alaska 99501
(907) 561-7743
7 (907) 562-8977 - fax

8 Attorney for Defendant Josef F. Boehm

9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA

11
12 Sally C. Purser,)
13 Plaintiff,) DEFENDANT JOSEF BOEHM'S
14 v.) OPPOSITION TO PLAINTIFF'S MOTION
15 Josef F. Boehm, Allen K.) FOR SANCTIONS
16 Bolling, and Bambi Tyree,)
17 Defendants.)
18)
19)

20 CASE NO.: A05-0085 (JKS)

21 I. BOEHM HAS COMPLIED WITH DISCOVERY DISCLOSURES TO DATE

22 Boehm's opposition to Summary Judgment was supported by
23 impeachment evidence as follows:

- 24 1. Purser Grand Jury Testimony;
25 2. Boehm Sentencing Hearing Testimony;
26 3. Purser's Expert Dr. Rose's Written Report;
27 4. Deposition Testimony;
28 5. Sworn Declarations of known witnesses Tina Arndt and Vince Blomfield;
6. Recorded Interview of known witness Miranda Ditullio;
7. Recorded Interview of Sally Purser

1 8. Report and sworn testimony of Dr. Jacobsen.

2 Purser argues that Boehm has failed to comply with *Federal Rule*
3 26(a)(1) disclosure requirements. Boehm respectfully disagrees.

4 *Federal Rule of Civil Procedure* 26(a)(1)(B) carves out an
5 exception to the disclosure requirements for the use of impeachment
6 evidence:

7 (B) a copy of, or a description by category and
8 location of, all documents, electronically stored
9 information, and tangible things that are in the
10 possession, custody, or control of the party and
that the disclosing party may use to support its
claims or defenses, unless solely for
impeachment;

11 *Federal Rule of Civil Procedure* 26(a)(5) sets forth additional and
12 needed methods of discovery:

13 **(5)Methods to Discover Additional Matter.** Parties
14 may obtain discovery by one or more of the
15 following methods: depositions upon oral
16 examination or written questions; written
17 interrogatories; production of documents or
things or permission to enter upon land or other
property under Rule 34 or 45(a)(1)©, for
inspection and other purposes; physical and
mental examinations; and requests for admission.

18 Boehm's disclosures have been timely and in line with statutory
19 language. Purser is not prejudiced by the need and disclosure of
20 additional discovery as a trial date has not been set. Furthermore and
21 most importantly, the existing and recently discovered evidence being
22 disclosed is relevant to the defense of Boehm and directly relates to
23 Purser's allegations.

24 The existence of additional lawsuits will undoubtedly reveal
25 additional relevant discovery to the instant action.¹

26
27 ¹As this court is aware, Boehm is a named defendant in additional lawsuits resulting from the underlying
28 criminal matter. Depositions and trial dates are currently being discussed and set. Boehm's counsel will seek relevant
discovery to be used in the instant matter. There is a continued need and good cause showing for additional discovery in

1 This is a very complex case that was left largely undiscovered
 2 for a four year period. Witnesses are difficult to locate. Virtually
 3 all of the witnesses for both plaintiff and defendant were at one time
 4 addicted to "crack" cocaine resulting in flawed memory, perception and
 5 credibility.

6 Former counsel's strategy did not include aggressive discovery,
 7 contrary to the present needs of this litigation.²

8
 9 **II. PURSER HAS ALWAYS KNOWN THE EXISTENCE OF BOEHM'S IMPEACHMENT**
 10 **WITNESSES AND IN MANY INSTANCES FAILED TO DISCLOSE THEIR**
 11 **IDENTITY IN DISCOVERY**

12 Purser argues that Boehm has attempted to "sand bag" by using
 13 affidavits from undisclosed witnesses in his opposition to summary
 14 judgment. Counsel's argument is misleading at best.

15 All of the witnesses, affidavits and identities used in Boehm's
 16 opposition to summary judgment were known of by Purser prior to her
 17 filing this lawsuit. Worse yet, Purser failed to identify them in
 18 answers to discovery and include some of them on her Final Witness
 19 List.

20 In some cases Purser's Final Witness List comprises the very
 21 individuals for which she claims are "undisclosed" by Boehm. The
 22 following is fact:

23 **I. Tina Arndt**

24 In her December 12, 2006 deposition, Purser testified that Tina
 25 Arndt was a witness to support the allegations set forth in her

26 _____
 27 light of the new facts brought to light.

28 ²Boehm's discovery efforts within the past three months have included multiple trips to Alaska, intensive investigation, depositions, multiple sets of written discovery, location and identification of new witnesses, brought forth multiple impeachment issues and material facts in dispute. Boehm has aggressively sought relevant discovery by way of written motion.

1 complaint. *Purser deposition, page 85, attached as Exhibit "A" to*
2 *Declaration of Brett A. Greenfield.*

3 Purser failed to identify Tina Arndt in her Final Witness List
4 and responses to Boehm's written discovery, set two. *Attached Exhibits*
5 *"B" and "C" to the Declaration of Brett A. Greenfield.*

6 On December 14, 2006, Boehm's investigator located Ms. Arndt,
7 interviewed her and thereafter obtained her sworn declaration.

8 The declaration:

9 **-Was disclosed to Plaintiff's counsel on December 29,**
10 **2006; and**
11 **-Impeaches all of Purser's allegations creating**
12 **multiple issues of material fact**

13 Prior to December 12, 2006, Boehm's current counsel had not
14 discussed nor sought to communicate with Tina Arndt. *See Declaration*
15 *of Brett A. Greenfield*

16 Purser's counsel was aware of the existence of Tina Arndt and
17 four additional witnesses as set forth in Purser's deposition
18 testimony, *(Purser Deposition, page 85), but failed to identify them*
19 in her written and sworn responses to Boehm's second set of discovery.
20 *Attached as Exhibit "D" to Declaration of Brett A. Greenfield.*

21 **ii. Vince Blomfield**

22 On December 13, 2006, Boehm's investigator located Mr. Blomfield
23 for the purpose of an interview. Boehm's counsel thereafter obtained
24 his sworn declaration.

25 The declaration:

26 **-Was disclosed to Plaintiff's counsel on December 29,**
27 **2006; and**
28 **-Impeaches Purser's allegations creating**
multiple issues of material fact

Purser knew of Mr. Blomfield's existence as set forth in his sworn declaration, but failed to identify him in her Final Witness List, sworn deposition testimony and written responses to discovery.

iii. Dr. Rose

Dr. Rose is Purser's expert. Dr. Rose's report was used by Boehm's counsel as impeachment to Purser's sworn deposition testimony which revealed:

- Many events of Purser's life were withheld from Dr. Rose creating inferences to be drawn from her testimony;

- Inconsistent testimony and recorded interviews in which Purser makes sexual assault claims against her uncle;

- Inconsistent claims about her cause of drug addiction;

- Inconsistent claims of her past sex behavior for drugs and money;

- Inconsistent claims regarding her family history of drugs and violence;

- Inconsistent claims regarding her alleged relationship with Boehm.

iv. Miranda Ditullio Testimony

Purser named Ditullio on her Final Witness list as "M.D." Purser and her counsel have always been aware of her existence.

Purser failed to identify Ms. Ditullio in her sworn deposition and sworn answers to discovery.

Ms. Ditullio was interviewed by investigator Terry Shurtleff for the purpose of the underlying criminal matter. Ms. Ditullio's interview was used solely for impeachment purpose and contradicts all of Purser's allegations.

v. Purser Grand Jury Testimony and Interviews

Purser and her counsel cannot be surprised by the use of her Grand jury testimony and statements to investigators as impeachment

1 to her present claims. Purser has acknowledged their existence and
 2 testified to making the statements in her December 12, 2006
 3 deposition. How can she now claim to be "sand bagged" by her own past
 4 statements?

5
 6 **III. PURSER HAS GIVEN EVASIVE DISCOVERY RESPONSES AND HAS FAILED TO
 INITIATE RELEVANT DISCOVERY TO DATE**

7 Purser's propounded written discovery has been limited to 1.
 8 financial documentation and 2. a request for interviews prepared for
 9 Boehm's criminal defense team for the purpose of an appeal. Boehm
 10 responds as follows:

11 1. There were no interviews made for the purpose of a criminal appeal,
 12 and;

13 2. Investigator interviews were taken for the underlying criminal
 action and are solely for the purpose of impeachment.

14 Plaintiff's remaining discovery has been presumptuous at best,
 15 limited to obtaining Boehm's financial documentation, including but
 16 not limited to:

- 17 - IRS tax documents and returns;
- 18 - Names and addresses of every tax person assisting in
the preparation of tax returns;
- 19 - Names and addresses of banks;
- 20 - Names and addresses of savings and loan facilities;
- 21 - Names and addresses of on or off shore accounts;
- 22 - Stock accounts;
- 23 - Business ledgers and Payroll ledgers;
- 24 - Names and addresses of business partners;
- 25 - Corporate stock certificates;
- 26 - Affiliations with corporations and/or limited
partnerships;
- 27 - Balance sheets;
- 28 - Documents filed for the purpose of business/personal
loans;
- Names and addresses of investors and stock holders;
- Assets sold or transferred.

26 Purser's counsel has refused to cooperate in discovery
 27 necessitating Boehm to file two Motions to Compel Discovery.
 28

Specifically, Purser has evasively responded to written discovery and refuses to allow for a psychological evaluation with Boehm's expert Dr. Mark Mills.

Currently, Purser refuses to give adequate responses to relevant questions regarding her Final Witness List.

Boehm has been very specific when attempting to narrow the issues with respect to Purser's Final Witness List. Boehm's second set of discovery requested as follows:

1. As to each person identified in your Final Witness List, describe in detail, including, but not limited to the following:

- a. How you first met;
- b. When you first met;
- c. Who introduced you;
- d. Where you first met;
- e. The nature of your relationship, how long it lasted, and why it ended;
- f. That person's knowledge of your alleged sexual contact with Defendant Boehm;
- g. That person's knowledge of your alleged drug use with Defendant Boehm;
- h. That person's facilitating or involvement with the activities described in subsection (f);
- i. That Person's facilitating or involvement with the activities described in subsection (g).

Purser's response was evasive, further frustrating Boehm's attempt to narrow the issues of litigation and timely comply with this Court's discovery deadline:

Question compounding in nature and this information has already been supplied to the Defendant on more than one occasion. Defendant has in his own possession, the information requested with regard to the Federal Criminal charges he pled guilty to. The Plaintiff knows of the witnesses but does not personally know the witnesses, except for "E.A., Kimberly Swentek, Bambi Tyree, Leslie Williams, Allen Bolling, Josef Boehm, Paxton Purser and Gerald Barnes. Some of the these individuals the Plaintiff

1 met while at Defendant Boehm's home during the period of
2 2001-2003...

3 Purser has repeatedly concluded that liability has been proven
4 but is evasive when asked to support her allegations. To date, Purser
5 relies on her own affidavit and that of recently dismissed defendant
6 Bambi Tyree to support the entirety of her factual allegations. The
7 recent discovery of new evidence and exposure of a multitude of
8 impeachment evidence shows good cause for the need of additional
9 discovery and disclosure.

10 **IV. CONCLUSION**

11 For the foregoing reasons, Defendant respectfully requests that
12 this honorable Court deny Plaintiff's motion in its entirety and in
13 the alternative fashion an order allowing for additional discovery in
14 order to better assess the issues to be litigated.

15 DATED this 29th day of January, 2007.

17 KENNER LAW FIRM

18
19 By: _____/s/_____
20 David E. Kenner
21 California 41425
22 16000 Ventura Blvd.
23 Penthouse 1208
24 Encino, California 91436

25 By: _____/s/_____
26 Brett A. Greenfield
27 California 217343
28 16000 Ventura Blvd.
Penthouse 1208
Encino, California 91436